

Central Valley Regional Water Quality Control Board

HEARING PROCEDURE

CEASE AND DESIST ORDER R5-2011-0019  
FOR  
CITY OF IONE WASTEWATER TREATMENT FACILITY  
AMADOR COUNTY

SCHEDULED FOR 29/30 MARCH 2012

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

**Overview**

The Central Valley Water Board, at its 29/30 March 2012 meeting, will consider modifying Cease and Desist Order (CDO) R5-2011-0019, which the Central Valley Water Board issued to the City of Ione on 8 April 2011.

The public hearing will commence at 8:30 a.m. or as soon thereafter as practical, or as announced in the Board's meeting agenda. The meeting will be held at:

11020 Sun Center Drive, Suite 200, Rancho Cordova, California.

An agenda for the meeting will be issued at least ten days before the meeting and posted on the Board's web page at:

[http://www.waterboards.ca.gov/centralvalley/board\\_info/meetings](http://www.waterboards.ca.gov/centralvalley/board_info/meetings).

**Hearing Procedure**

The hearing will be conducted in accordance with this Hearing Procedure. The procedures governing adjudicatory hearings before the Central Valley Water Board may be found at California Code of Regulations, title 23, section 648 et seq., and are available at:

<http://www.waterboards.ca.gov>

Copies will be provided upon request. In accordance with Section 648(d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648(b) and herein, Chapter 5 of the Administrative Procedures Act (Gov't Code, § 11500 et seq.) does not apply to this hearing.

The Discharger shall attempt to resolve objections to this Hearing Procedure with the Prosecution Team BEFORE submitting objections to the Advisory Team.

**Hearing Participants**

Participants in this proceeding are designated as either "Designated Parties" or "Interested Persons." Designated Parties may present evidence and cross-examine witnesses and are subject to cross-examination. Interested Persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested Persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). At the hearing, both Designated Parties and Interested Persons

may be asked to respond to clarifying questions from the Central Valley Water Board, staff, or others, at the discretion of the Board Chair.

The following participants are hereby designated as Designated Parties in this proceeding:

1. Central Valley Water Board Prosecution Team
2. The City of Lone

### **Requesting Designated Party Status**

Persons who wish to participate in the hearing as a Designated Party must request designated party status by submitting a request in writing so that it is received no later than the deadline listed under "Important Deadlines" below. The request shall include an explanation of the basis for status as a Designated Party (i.e., how the issues to be addressed at the hearing affect the person, the need to present evidence or cross-examine witnesses), along with a statement explaining why the parties listed above do not adequately represent the person's interest. Any objections to these requests for designated party status must be submitted so that they are received no later than the deadline listed under "Important Deadlines" below.

### **Primary Contacts**

#### **Advisory Team:**

Mr. Kenneth Landau, Assistant Executive Officer  
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670  
Phone: (916) 464-4726; fax: (916) 464-4758  
klandau@waterboards.ca.gov

Mr. David Coupe, Senior Staff Counsel  
State Water Resources Control Board, Office of Chief Counsel  
1515 Clay Street, Suite 1400, Oakland, CA 94612  
Phone: (510) 622-2306  
dcoupe@waterboards.ca.gov

#### **Prosecution Team:**

Ms. Wendy Wyels, Environmental Program Manager  
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670  
Phone: (916) 464-4835; fax: (916) 464-4681  
wwyels@waterboards.ca.gov

Patrick Pulupa, Staff Counsel  
State Water Resources Control Board, Office of Chief Counsel  
Physical Address: 1001 I Street, Sacramento, CA 95814  
Mailing Address: P.O. Box 100, Sacramento, CA 95812  
Phone: (916) 341-5189  
ppulupa@waterboards.ca.gov

#### **Discharger**

Jeff Butzlaff, Interim City Manager  
City of Lone  
1 East Main Street

P.O. Box 398  
Ione, CA 95640  
Phone: 209-274-2412, ext. 111  
JButzlaff@ione-ca.com

James D. Maynard, Interim City Attorney  
Phone: 916-733-3510  
jmaynard@jamesmaynardlaw.com

### **Separation of Prosecutorial and Advisory Functions**

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Board (the "Prosecution Team") have been separated from those who will provide legal and technical advice to the Board (the "Advisory Team"). Members of the Advisory Team are: Mr. Kenneth Landau, Assistant Executive Officer and Mr. David Coupe, Senior Staff Counsel. Members of the Prosecution Team are: Ms. Pamela Creedon, Executive Officer; Mr. Rick Moss, Assistant Executive Officer; Ms. Wendy Wyels, Environmental Program Manager; Ms. Mary Boyd, Water Resources Control Engineer; and Mr. Patrick Pulupa, Staff Counsel.

Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Pamela Creedon regularly advises the Central Valley Water Board in other, unrelated matters, but is not advising the Central Valley Water Board in this proceeding. Other members of the Prosecution Team act or have acted as advisors to the Central Valley Water Board in other, unrelated matters, but they are not advising the Central Valley Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Central Valley Water Board or the Advisory Team regarding this proceeding.

### **Ex Parte Communications**

Designated Parties and Interested Persons are forbidden from engaging in ex parte communications regarding this matter. An ex parte communication is a written or verbal communication related to the investigation, preparation, or prosecution of the ACL Complaint between a Designated Party or an Interested Person and a Board Member or a member of the Board's Advisory Team. However, if the communication is copied to all other persons (if written) or is made in a manner open to all other persons (if verbal), then the communication is not considered an ex parte communication. Communications regarding non-controversial procedural matters are also not considered ex parte communications and are not restricted.

### **Hearing Time Limits**

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: the City of Ione and the Board's Prosecution Team party shall have a combined 30 minutes each to present evidence (including evidence presented by witnesses called by the designated party), to cross-examine witnesses (if warranted), and to provide a closing statement. All other Designated Parties shall have a combined time limit prescribed by the Board's Advisory Team.

Each Interested Person shall have **3** minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Board Chair (at the hearing) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments, or legal argument requires extra time, and why it could not have been provided in writing by the applicable deadline.

A timer will be used, but will not run during Board questions or the responses to such questions, or during discussions of procedural issues.

### **Submission of Evidence and Policy Statements**

All evidence submitted for the 8 April 2011 Board Meeting will be considered part of the administrative record for this proceeding, and does not need to be submitted a second time.

The Prosecution Team and all other Designated Parties (including the Discharger) must submit the following information in advance of the hearing:

1. All new evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the Central Valley Water Board to consider. Evidence and exhibits already in the public files of the Central Valley Board may be submitted by reference, as long as the exhibits and their location are clearly identified in accordance with California Code of Regulations, title 23, section 648.3. Board members will not generally receive copies of materials incorporated by reference unless copies are provided, and the referenced materials are generally not posted on the Board's website.
2. All new legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.

All of the above information shall be submitted by the Designated Parties so that it is received no later than the deadline listed under "Important Deadlines" below.

**Copies:** Board members will receive copies of all submitted materials. The Board Members' hard copies will be printed in black and white on 8.5"x11" paper from the Designated Parties' electronic copies. Designated Parties who are concerned about print quality or the size of all or part of their written materials should provide an extra nine paper copies for the Board Members. For voluminous submissions, Board Members may receive copies in electronic format only. Electronic copies will also be posted on the Board's website. Parties without access to computer equipment are strongly encouraged to have their materials scanned at a copy or mailing center. The Board will not reject materials solely for failure to provide electronic copies.

**Other Matters:** The Prosecution Team will prepare a summary agenda sheet (Summary Sheet) and will respond to all significant comments. The Summary Sheet and the responses shall clearly state that they were prepared by the Prosecution Team. The Summary Sheet and the

responses will be posted online, as will revisions to the proposed Order. Physical mail-out of these documents may occur the day after the date listed in the “Important Deadlines” below.

**Interested Persons:** Interested Persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but they must be received by the deadline listed under “Important Deadlines” to be included in the Board’s agenda package. Interested Persons do not need to submit written comments in order to speak at the hearing.

**Prohibition on Surprise Evidence:** In accordance with California Code of Regulations, title 23, section 648.4, the Central Valley Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Board Chair will likely exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will *not* be considered by the Central Valley Water Board and will not be included in the administrative record for this proceeding.

**Presentations:** Power Point and other visual presentations may be used at the hearing, but their content shall not exceed the scope of other submitted written material. These presentations must be provided to the Advisory Team at or before the hearing both in hard copy and in electronic format so that they may be included in the administrative record.

**Witnesses:** All witnesses who have submitted written testimony shall appear at the hearing to affirm that the testimony is true and correct, and shall be available for cross-examination.

### **Evidentiary Documents and File**

The ACL Complaint and related evidentiary documents are on file and may be inspected or copied at the Central Valley Water Board office at 11020 Sun Center Drive, Rancho Cordova, CA 95670. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Central Valley Water Board’s Chair. Many of these documents are also posted on-line at:

[http://www.waterboards.ca.gov/centralvalley/board\\_decisions/tentative\\_orders/index.shtml](http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/index.shtml)

Although the web page is updated regularly, to assure access to the latest information, you may contact [Prosecution Team Head] (contact information above) for assistance obtaining copies.

### **Questions**

Questions concerning this proceeding may be addressed to the Advisory Team attorney (contact information above).

## **IMPORTANT DEADLINES**

*All required submissions must be received by 5:00 p.m. on the respective due date.*

9 February 2012	<ul style="list-style-type: none"> <li>Prosecution Team issues CDO for Comment, issues Hearing Procedure, and other related materials.</li> </ul>
16 February 2012	<ul style="list-style-type: none"> <li>Objections due on Hearing Procedure.</li> <li>Deadline to request "Designated Party" status.</li> </ul> <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Pros. Team Attorney, Adv. Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Pros. Team Primary Contact, Adv. Team Primary Contact</p>
21 February 2012	<ul style="list-style-type: none"> <li>Advisory Team issues decision on requests for Designated Party status.</li> <li>Advisory Team issues decision on Hearing Procedure objections.</li> </ul>
24 February 2012	<ul style="list-style-type: none"> <li>Prosecution Team's deadline for submission of information required under "Evidence and Policy Statements," above.</li> </ul> <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons</p> <p><u>Electronic and Hard Copies to:</u> Adv. Team Primary Contact, Adv. Team Attorney</p>
2 March 2012 <sup>†</sup>	<ul style="list-style-type: none"> <li>Remaining Designated Parties' (including the Discharger's) deadline to submit all information required under "Evidence and Policy Statements," above. This includes all written comments regarding the CDO.</li> <li>Interested Persons' comments are due.</li> </ul> <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Pros. Team Attorney, Adv. Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Pros. Team Primary Contact, Adv. Team Primary Contact</p>
12 March 2012	<ul style="list-style-type: none"> <li>Prosecution Team submits Summary Sheet and responses to comments.</li> </ul> <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons</p> <p><u>Electronic and Hard Copies to:</u> Adv. Team Primary Contact, Adv. Team Attorney</p>
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<sup>†</sup> *This deadline is set based on the date that the Board compiles the Board Members' agenda packages. Any material received after this deadline will not be included in the Board Members' agenda packages.*